One Court of Justice
MICHIGAN SUPREME COURT
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FOR IMMEDIATE RELEASE

MICHIGAN SUPREME COURT TO HEAR ORAL ARGUMENTS IN 'NO DUTY TO RETREAT' CASE TOMORROW

LANSING, MI, April 8, 2002 – **A man who claimed he was attacked in his garage – and who shot and killed his alleged attacker – argues that he was not obliged to retreat before defending himself. The case presenting this issue is one of six that will be heard by the Michigan Supreme Court in oral arguments tomorrow and Wednesday.**

Also before the Court is a criminal case involving a police officer who claimed he was entrapped into drug possession charges. The Court will also hear another criminal case, a worker's compensation dispute, a claim against the City of Warren, and a lawsuit involving a construction project.

Court will be held **April 9 and 10** in the Supreme Court Room on the second floor of the G. Mennen Williams (a/k/a Law) Building. Court will convene at **9:30 a.m.** each day. The case listed after the break on April 9 may be heard after 12:30 p.m.

(*Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys*.)

Tuesday, April 9

PEOPLE v. RIDDLE
Attorney for defendant Marcel R. Riddle: Douglas W. Baker/313.256.9833
Prosecuting attorney: Timothy A. Baughman/313.224.5792
At issue: Where the defendant claims he was threatened by another man in his garage, did he have a duty to retreat before defending himself? Michigan law has long held that a person in his or her own home does not have to retreat from an attacker.
Background: Defendant Marcel Riddle and two friends, Robin Carter and James Billingsley,

were socializing on the evening of August 15, 1997. Riddle was grilling fish just inside the detached garage next to his home. According to Riddle, he tried to break up an argument between Carter and Billingsley, only to be threatened by Carter with what Riddle thought was a gun. Riddle, who was standing inside the door of his garage, grabbed his rifle, which he kept in the garage, and shot at the ground in front of Carter, allegedly intending to frighten Carter. Billingsley gave a different version of events, testifying that Riddle went into his house and returned with the rifle after a verbal exchange with Carter. Carter sustained a total of eleven gunshot wounds to his legs, and died from those wounds. The Wayne County Prosecutor charged Riddle with first-degree murder and felony-firearm. At trial, Wayne County Circuit Judge Sean Cox instructed the jury that defendant had a duty to retreat from Carter if he could safely do so. The jury convicted defendant of the lesser offense of second-degree murder, plus felony-firearm. Riddle was sentenced to 15 to 30 years for second-degree murder, and a consecutive two-year term for felony-firearm. The Court of Appeals affirmed the conviction in an unpublished decision. Riddle appeals. He argues that the trial judge should have instructed the jury that Riddle had no duty to retreat from Carter because Riddle was in the "curtilage," or area surrounding his home. Riddle's argument rests on a line of Michigan Supreme Court decisions from the 1800s. The prosecution argues that the "no duty to retreat" doctrine applies only when the person being attacked is in his or her own home, not in the area outside the home.

PEOPLE v. HARDIMAN

Attorney for defendant Carman Hardiman: Gail Rodwan/313.256.9833

Prosecuting attorneys: David Gorcyca, Janice A. Kabodian/248.858.0656

At issue: Where two letters addressed to the defendant were found in an apartment and its mailbox during a drug raid, along with women's clothing, was the evidence sufficient to link her to the drugs?

Background: On October 22, 1996, police officers executed a search warrant at an apartment in Pontiac. No one was in the apartment when the police entered; police stopped defendant Carman Hardiman in the apartment's parking lot sometime during the raid. During the search, police found in a bedroom nightstand a letter addressed to Hardiman at that address. They also discovered cash, and bags of heroin and marijuana. The police also found correspondence addressed to Rodney Crump, along with an ID card and a loan payment book belonging to Crump. Both male and female clothing were found in the bedroom closet, including a blue denim dress that contained forty $10 packs of heroin in the pocket. Police found an unpostmarked letter addressed to Hardiman in the apartment mailbox. Crump was convicted of drug possession in a separate trial.

Hardiman was tried separately in a jury trial before Oakland County Circuit Judge Edward Sosnick. The prosecution's theory was that Hardiman and Crump lived in the apartment and jointly and constructively possessed the drugs found in the bedroom. Hardiman was convicted of possession with intent to deliver less than fifty grams of heroin, and possession of marijuana. She was sentenced to lifetime probation for the possession with intent to deliver heroin conviction, and one year probation for the possession of marijuana conviction. The Court of Appeals reversed in an unpublished decision, stating that there was not enough evidence to link Hardiman to the drugs found in the apartment. The prosecution appeals. Prosecutors argue

that, based on the evidence, the jury reasonably inferred that Hardiman was living at that apartment at the time the drugs were found, and that she shared the bedroom in which the drugs were discovered.

STOKES v. MILLEN ROOFING COMPANY
Attorneys for plaintiffs Robert and Patricia Stokes: George N. Bashara, Jr. and Mark Merlanti/313.965.8300
Attorney for defendant Millen Roofing Company: Donald R. Visser/616.531.7711
At issue: Under Michigan law, an unlicensed residential contractor cannot legally place a lien on a construction project. Where the unlicensed contractor placed an invalid lien on the plaintiff's property, could the trial judge create a remedy that allowed the contractor to recover payment for its work?
Background: Robert and Patricia Stokes contracted with defendant Millen Roofing Company, a Wisconsin business never licensed in Michigan, to install a slate roof on the Stokes' home. In July 1994, after a number of disagreements, Millen Roofing stopped work on the project, leaving behind a "punch list" of incomplete items. Also in July 1994, Millen Roofing filed a lien against plaintiffs' property, including $50,000 in disputed "extras." In August 1994, the plaintiffs sued in Kent Circuit Court, seeking to remove the lien and recover damages for what they alleged was Millen Roofing's breach of contract. They argued that, under state law, Millen Roofing could not impose the lien because it was an unlicensed contractor. Millen Roofing filed a counterclaim seeking recovery of the contract balance and an alleged extra amount of almost $53,000. Kent County Circuit Judge Donald A. Johnston removed the lien because Millen Roofing was not a licensed residential contractor. Ultimately, however, the judge ruled that Millen Roofing could remove the roofing materials from the plaintiffs' house, if Millen Roofing paid $52,934 to an escrow agent, who would pay those funds to the plaintiffs when the roofing materials were removed. If the plaintiffs paid $113,269 to the escrow agent, Millen Roofing would not have the right to remove the roofing materials, but would receive the funds placed in escrow, the trial judge stated. The Court of Appeals affirmed in a published opinion, but said it was doing so only because it was required to follow the precedent of Republic Bank v Modular One LLC, 232 Mich App 444 (1998), with which the Court of Appeals panel disagreed. Both the plaintiffs and the defendant appeal. Millen Roofing argues that the plaintiffs are using the licensing requirement to get out of paying for their roof. The plaintiffs contend that the trial judge's solution was improper because he allowed an unlicensed contractor to recover money for the project, although the contractor had no right to impose a lien. The Bureau of Commercial Services, which has filed a brief in the case as *amicus curiae*, contends the Court of Appeals decision, if allowed to stand, will permit recovery by other persons required to have licenses.

[BREAK - the case listed after the break will be heard at 12:30 p.m. or later]

PEOPLE v. JOHNSON
Attorney for defendant Jessie Johnson: Robyn B. Frankel/248.645.1400
Prosecuting attorney: Robert C. Williams/248.858.5230
At issue: The defendant in this case is a police officer suspected of being involved in a drug

house. An undercover State Police officer, posing as a drug dealer, originally asked the defendant to provide security - but later asked him to actually handle drugs. Was the defendant entrapped into the resulting drug possession charges?
Background: The defendant, a Pontiac police officer named Jessie Johnson,became the center of a police investigation after an informant named Lemuel Flack told police that Johnson was involved in a drug house operation at a house Johnson owned in Pontiac. A State Police officer, Lt. Sykes, posed as a drug dealer. He asked Johnson to provide security for him and to find potential locations for drug dens. Johnson accompanied Sykes to a supposed drug deal at a mall; the other person they were to meet was an undercover police officer. Sykes handed Johnson the drugs and told Johnson to meet him on the other side of the building; later, Sykes told Johnson that Johnson would have to handle drugs in future deals. Johnson was arrested after a second, similar transaction between two undercover police officers. Johnson was charged with two counts of possession with intent to deliver between 225 and 649 grams of cocaine. Ultimately, Johnson moved to dismiss the case, arguing that he was entrapped into the possession charges. Oakland County Circuit Judge David Breck agreed, stating that Johnson's original "role was to protect the undercover operative from rip off or arrest." Johnson was manipulated into committing a new crime, the judge concluded. In an unpublished decision, the Court of Appeals affirmed. The prosecution appeals.

Wednesday, April 10

OMELENCHUK v. CITY OF WARREN
Attorney for plaintiffs Jeanne and Kristin Omelenchuk: Stephen J. DeHaan/616.235.2300
Attorney for defendant City of Warren: Rosalind Rochkind/313.446.5522
At issue: Where the plaintiffs claim that a deceased family member was the victim of gross negligence by City of Warren EMS workers, can the city be sued – or does governmental immunity bar the suit?
Background: On February 13, 1994, George Omelenchuk was discovered on the floor of his business by plaintiff Jeanne Omelenchuk. George had apparently suffered a heart attack; a 911 call summoned EMS. Resuscitation efforts included insertion of an endotracheal tube. The tube was later discovered in the esophagus, not the trachea. Resuscitation efforts were unsuccessful and George was declared dead. Plaintiffs Jeanne and Kristin Omelenchuk sued the City of Warren and its fire department, claiming that the EMS crew members were grossly negligent and caused George's death. The Omelenchuks' complaint also stated that the defendant City of Warren was vicariously liable for the crew members' alleged gross negligence. The City of Warren moved to dismiss the suit, arguing in part that the claims were barred by governmental immunity. Macomb Circuit Judge George E. Montgomery agreed and dismissed the case. Ultimately, the Court of Appeals reversed in an unpublished decision, stating that governmental immunity did not bar the suit against the city. Under the 1994 version of Michigan's Emergency Medical Services Act (EMSA), the city's employees could be sued for grossly negligent conduct. Accordingly, the city could be sued, the Court of Appeals concluded. The city appeals. It argues that a section of EMSA states that the provision governing gross negligence "does not limit immunity from liability otherwise provided by law." Accordingly, EMSA does not limit the

city's immunity from suit under Michigan's Governmental Tort Liability Act (GTLA), the city contends. The plaintiffs argue that there is no evidence that the state Legislature intended to eliminate vicarious liability for gross negligence by incorporating GTLA's provisions into EMSA.

SINGTON v. CHRYSLER CORPORATION
Attorneys for plaintiff Charles Sington: Paul S. Rosen, Daryl Royal/248.557.1155
Attorney for defendant Chrysler Corporation: Gerald M. Marcinkoski/248.433.1414
At issue: Where a worker was injured in 1994 – but continued to work at his former job with some restrictions until suffering a stroke in 1997 – is he entitled to worker's compensation?
Background: Charles Sington began working for Chrysler in 1971. He performed various production jobs that included stacking and loading parts. In June 1994, Sington slipped and fell, injuring his left shoulder. After surgery on the shoulder, he returned to work on January 3, 1995 with a permanent restriction of no work above the left shoulder. Ultimately, after another surgery on his right shoulder in 1996, Sington returned to work with a bilateral lifting limit of 20 pounds as well as a push/pull limit of 20 pounds. Plaintiff performed his previous jobs but did them within his limitations. He also served as a "floater," performing various duties on an as-needed basis. On March 10, 1997, Sington suffered a stroke which left him unable to use his right arm and fingers. Sington has been off work as a result of the stroke. A worker's compensation magistrate found that, both before and after his slip and fall in 1994, Sington performed a regular plant job until his last day of work. As a result, the magistrate concluded that plaintiff's wage loss was due to his stroke and that he did not have a compensable disability. The Worker's Compensation Appellate Commission affirmed the magistrate, but the Court of Appeals reversed. The Court of Appeals stated that the magistrate and WCAC erred by focusing on the duties Sington could still perform after his 1994 injury, rather than focusing on the tasks he was restricted from doing. Chrysler appeals. The parties' arguments center on whether Sington should be considered to have been disabled as of 1994, and whether he was "reasonably employed" in jobs that accommodated his restrictions. If so, Sington argues, he is entitled to worker's compensation benefits under §301(5) of the Worker's Disability Compensation Act. Chrsyler argues that Sington was not disabled and that he was working at a "regular plant job." Any limitations on his job were caused by the nonwork-related injury for which Sington underwent surgery in 1996, Chrsyler claims.

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